

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 DONNA CORBELLO,)

9 Plaintiff,)

10 vs.)

11 THOMAS GAETANO DEVITO et al.,)

12 Defendants.)

2:08-cv-00867-RCJ-PAL

13 **ORDER**

14 This case arises out of alleged copyright infringement. Pending before the Court is a
15 Motion for Re-Taxation of Costs (ECF No. 825). For the reasons given herein, the Court denies
16 the motion.

17 **I. FACTS AND PROCEDURAL HISTORY**

18 Plaintiff Donna Corbello is the widow and heir of Rex Woodard, who assisted Defendant
19 Thomas Gaetano “Tommy” DeVito in writing his unpublished autobiography (the “Work”).
20 Plaintiff alleges that DeVito and others wrongfully appropriated the Work to develop the
21 screenplay for *Jersey Boys*, a hit musical based on the band *The Four Seasons* that has played in
22 the United States, Canada, England, and Australia.

23 In December 2007, Plaintiff sued DeVito in the U.S. District Court for the Eastern
24 District of Texas on three causes of action: (1) declaratory judgment; (2) equitable accounting;
25 and (3) breach of contract. That court transferred the case to this District in 2008 pursuant to 28

1 U.S.C. § 1404(a), without deciding whether it had personal jurisdiction over DeVito, and it
2 denied Plaintiff's motion to reconsider. The Third Amended Complaint, filed in March 2011,
3 lists fourteen Defendants and twenty causes of action. The Court has issued two summary
4 judgment orders, and the facts of the case are recounted more closely therein. During the first
5 round of summary judgment motions, the Court ruled that DeVito and Plaintiff were 50% joint
6 owners of the Work, that DeVito had granted Defendants Frankie Valli and Robert "Bob"
7 Gaudio a selectively exclusive license to exploit and further license the Work, i.e., a license that
8 was exclusive as against DeVito but nonexclusive as against Plaintiff, and that Valli and Gaudio
9 had in turn granted a nonexclusive sublicense to Defendant DSHT, Inc. The Court also ruled that
10 only DeVito was potentially liable for a direct accounting to Plaintiff. During the second round
11 of summary judgment motions, the Court granted summary judgment to all Defendants except
12 DeVito, who remains potentially liable on the second through eleventh claims, and Michael
13 David, who had moved against the sixteenth and seventeenth claims against him based only upon
14 an alleged lack of personal jurisdiction. The Court later granted summary judgment to David and
15 denied a motion for fees and costs under § 505 of the Copyright Act, as well as for fees under 28
16 U.S.C. § 1927.

17 Based upon this ruling, the Clerk taxed costs in the amount of \$0. Defendants asked the
18 Court to re-tax costs, which motion the Court granted. Plaintiff has now asked the Court to retax
19 costs again.

20 **II. DISCUSSION**

21 Plaintiff asks the Court to subtract \$47,019.08 in costs related to the production of native
22 files. The Court will not retax costs again. The Court previously considered and rejected
23 Plaintiff's arguments that costs should be taxed at \$0 in response to Defendants' previous motion
24 to retax costs.

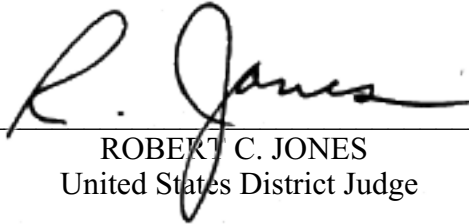
25 ///

CONCLUSION

IT IS HEREBY ORDERED that the Motion for Re-Taxation of Costs (ECF No. 825) is DENIED.

IT IS SO ORDERED.

Dated this 25th day of April, 2013.



ROBERT C. JONES
United States District Judge